

## PATENT COOPERATION TREATY

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# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference NO 7380/WO/PCT		<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/EP 03/08745	International filing date (day/month/year) 07.08.2003	Priority date (day/month/year) 04.09.2002	
International Patent Classification (IPC) or both national classification and IPC C11B1/10			
Applicant NESTEC S.A. et al.			
<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p><input type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of      sheets.</p>			
<p>3. This report contains indications relating to the following items:</p> <p>I <input checked="" type="checkbox"/> Basis of the opinion</p> <p>II <input type="checkbox"/> Priority</p> <p>III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p>IV <input type="checkbox"/> Lack of unity of invention</p> <p>V <input checked="" type="checkbox"/> Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p>VI <input type="checkbox"/> Certain documents cited</p> <p>VII <input type="checkbox"/> Certain defects in the international application</p> <p>VIII <input type="checkbox"/> Certain observations on the international application</p>			
Date of submission of the demand  17.03.2004		Date of completion of this report  06.12.2004	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer  Vernier, F  Telephone No. +49 89 2399-8646 	

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. PCT/EP 03/08745

**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17):*

**Description, Pages**

1-18 as originally filed

**Claims, Numbers**

1-17 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).  
☐ the language of publication of the international application (under Rule 48.3(b)).  
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority in written form.  
☐ furnished subsequently to this Authority in computer readable form.  
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.  
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:  
☐ the claims, Nos.:  
☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

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**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Yes: Claims	
	No: Claims	1-17
Inventive step (IS)	Yes: Claims	
	No: Claims	1-17
Industrial applicability (IA)	Yes: Claims	1-17
	No: Claims	

**2. Citations and explanations**

**see separate sheet**

**Item V**

**1. The following documents are considered:**

D1: EP-A-1 239 022

D2: EP-A-1 178 118

**2. Article 33(2) PCT**

The subject-matter of D2 (see cited passages in the search report) discloses a microbial oil comprising various PUFAs, obtained by a process involving a fermentation and pressing. In particular, pressing at 100-600 bar is disclosed and such pressing can be done on a concentrated (dewatered, thus a "dry state") biomass: see paragraphs 13, 16, 19-20. The obtained oil is used for example in food stuffs, infant formula, nutritional supplements or pharmaceuticals. Therefore, present independent claims do not meet the requirements of novelty.

**3. Article 33(3) PCT**

Discussion of the question whether the claimed subject-matter involves an inventive step is only of relevance once novelty has been established.

However, it presently seems that none of the dependant claims contains subject-matter that would be suitable to render the claims inventive once novelty has been established.

**4. Article 33(4) PCT**

The subject-matter of present claims 1-17 meet the requirements of Article 33(4) PCT, since it is applicable in the human nutrition industry.

**5. Further comments**

- a. Contrary to the requirements of Rule 5.1(a)(ii) PCT, document D2 has not been identified in the description and the relevant background art disclosed therein has not been briefly discussed.
- b. The term "dry state" in present claim 1 lacks clarity (Article 6 PCT): it is inevitable that some moisture may remain, and its amount has not been given. This makes comparing with the prior art difficult.
- c. Document D1 could be relevant in assessing novelty in the regional phase in front of

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EXAMINATION REPORT - SEPARATE SHEET**

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the EPO.